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MONTANA TWELFTH JUDICIAL DISTRICT COURT, HILL COUNTY

J. MURRAY HURLBURT and RENEE)
RATLIFF, individually and as) Cause No. DV-07-012
Personal Representatives of the Estate)
of ARDELLE HURLBURT, deceased)
Plaintiffs,)
vs.)
Bondex, Inc.; Durabond Products Ltd;)
Georgia Pacific Corp.; Flintkote Co.; The)
Glidden Company, a/k/a ICI Paints North)
America; John Does I, II, III, IV and V.)
Defendants.)

CV 07-016-GF-SEH

**COMPLAINT AND JURY
DEMAND**

COMES NOW Plaintiffs, by and through counsel, and for their cause of action, allege:

ALLEGATIONS COMMON TO ALL COUNTS

1. At all relevant times, Plaintiffs were and are citizens and residents of the State of Montana.
2. Defendant Bondex, Inc. is a foreign corporation primarily located in the State of South Carolina.
3. Defendant Durabond Products Ltd. is a foreign international corporation primarily located in the Province of Ontario, Canada.
4. Defendant Georgia Pacific Corp. is a foreign corporation primarily located in the State

of Georgia.

5. Defendant Flintkote Co. is a foreign corporation primarily located in the State of
1 Delaware.

2 6. Defendant, The Glidden Company, a/k/a ICI Paints North America is a foreign
3 corporation primarily located in the State of Ohio.
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5 7. Defendants John Does I, II, III, IV and V are alter egos, alias' or unknown entities
6 associated within the manufacture, marketing and financing of building, construction
7 and/or design products.

8 **COUNT ONE—SURVIVORSHIP AND NEGLIGENCE**

9 8. In approximately 1972, James A. Hurlburt and Ardell Hurlburt purchased products
10 including, but not limited to, sheetrock, joint compound, ceiling texture and paint,
11 manufactured and/or sold by Bondex, Inc., Durabond Products Ltd., Flintkote Co.,
12 Georgia Pacific Corp, The Glidden Company, a/k/a ICI Paints North America, and John
13 Does I, II, III, IV and V..
14

15 9. The aforesaid products contained a substance, the generic name for which is asbestos,
16 and components thereof.

17 10. James A. Hurlburt and his son, Plaintiff, J. Murray Hurlburt, used said products
18 when finishing their home at 16 Hidden Valley Road, Havre, Hill County, Montana
19 during the years 1972 through 1973.
20

21 11. Decedent Ardelle Hurlburt lived in the same house during said finishing work. She
22 cleaned up after James and J. Murray Hurlburt's home improvement work and washed
23 their clothes. During these and other activities, decedent was exposed, through
24 inhalation, ingestion or otherwise, to asbestos and/or asbestos containing products.
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12. On or about January 26, 2004, decedent was diagnosed as suffering from
mesothelioma, a fatal condition caused by exposure to asbestos. Prior to her diagnosis,
1 decedent was not aware that exposure to asbestos or other asbestos containing products
2 presented any risk of injury and/or disease to her, and she had not been advised or
3 informed by anyone that she could contract, or indeed had contracted, any disease,
4 sickness, or injury as a result of being in the vicinity of the products referred to herein.
5

6 13. Defendants, and each of them, knew, or in the exercise of reasonable care should
7 have known, that the asbestos products which they manufactured, sold, and/or distributed
8 were dangerous, poisonous, and/or harmful to a person's body, lungs, respiratory system,
9 skin, and health. Defendants, and each of them, failed to exercise reasonable care in
10 designing a reasonably safe product, and in warning decedent of the danger and harm
11 associated with asbestos exposure without adequate protective equipment.
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13 14. Defendants knew, or should have known, that the aforementioned asbestos and
14 asbestos containing products would be used or handled in such a manner described herein
15 resulting in the release of airborne asbestos fibers, and that through such foreseeable use
16 and/or handling, "exposed persons", such as the decedent herein, would suffer personal
17 injuries and death as a result thereof.
18

19 15. Defendants willfully and wantonly disregarded the safety of others in continuing to
20 manufacture and market asbestos containing products, which Defendants knew created a
21 substantial risk of physical harm to those exposed to such products.
22

23 16. As a direct and proximate result of Defendants' negligence, decedent Ardelle
24 Hurlburt experienced great physical pain and suffering and mental and emotional distress.
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COUNT TWO: STRICT LIABILITY

17. Plaintiffs reallege and incorporate herein by reference the allegations contained in
1 paragraphs 1 through 16 above.

2 18. Defendants are or were at the relevant times involved in the business of selling
3 asbestos or asbestos containing products. Each product referenced herein was expected
4 to and did reach the user or consumer without substantial change in the condition in
5 which it was sold.

6 19. Each product referenced herein was sold in a defective condition unreasonably
7 dangerous to the user or consumer in that they contained harmful and deleterious asbestos
8 fibers known, or in the exercise of reasonable care should have been known, by
9 Defendants as possessing dangers to life and health.

10 20. Defendants placed their asbestos products on the market knowing that they would be
11 used without inspection for such defects. James Hurlburt, J. Murray Hurlburt, and
12 decedent used and interacted with said asbestos containing products in a reasonably
13 foreseeable manner.

14 21. Defendants failed to give appropriate and comprehensive warnings concerning the
15 hazardous exposure to asbestos fibers, or use of products which contain asbestos fibers.

16 22. As a direct and proximate result of Defendants actions and or failure to act, Decedent
17 was exposed to the harmful effects of the asbestos fibers contained within said products.
18 As a further direct and proximate result of Defendants' actions, and/or failures to act,
19 Decedent contracted mesothelioma and experienced the resulting damages set forth
20 herein.

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COUNT THREE: BREACH OF WARRANTY

- 1 23. Plaintiffs reallege and incorporate herein by reference the allegations contained in
2 paragraphs 1 through 22, above.
3 24. Defendants warranted either expressly or impliedly that said asbestos containing
4 products were merchantable.
5 25. Said asbestos containing products were not merchantable in that each contained
6 harmful and deleterious asbestos fibers known to Defendants to be defective and harmful
7 to humans exposed thereto and not suitable for the purposes of and uses for which said
8 products were intended.
9 26. As a direct and proximate result of Defendants breach of warranty, Decedent was
10 exposed to the harmful effects of the asbestos fibers contained within said products and
11 contracted the fatal illness and experienced the resulting damages set forth herein.
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COUNT FOUR: WRONGFUL DEATH

- 14 27. Plaintiffs reallege and incorporate herein by reference, the allegations contained in
15 paragraphs 1 through 26, above.
16 28. As decedent's heirs, Plaintiffs, J. Murray Hurlburt and Renee Ratliff are entitled to
17 bring this action pursuant to § 27-1-513, M.C.A.
18 29. As a direct and proximate result of decedent's exposure to the harmful and
19 deleterious asbestos products described above, decedent suffered fatal injuries to her
20 lungs, respiratory and cardiovascular systems, and died on May 25, 2005 of
21 mesothelioma.
23 30. As a direct and proximate result of the above described death, Plaintiffs, J. Murray
24 Hurlburt and Renee Ratliff have been and will continue to be deprived of the society,
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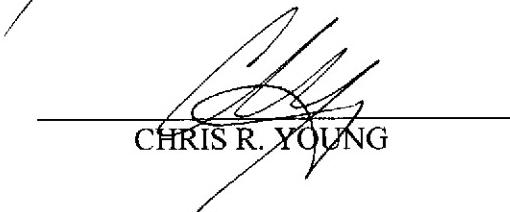
care, comfort and companionship of their mother and have incurred burial and interment costs.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For an award of decedent's general and special damages including, but not
2 limited to, her pain and suffering, mental and emotional distress, and medical expenses;
3. For an award of Plaintiffs, J. Murray Hurlburt and Renee Ratliff's general
4 and special damages for the wrongful death and loss of the society, care, comfort and
5 companionship of their mother;
6. For Plaintiffs' allowable costs incurred herein; and
7
8. For such other and further relief as the court deems just and proper.

Plaintiffs demand a trial by jury.

DATED this 22nd day of January, 2007.


CHRIS R. YOUNG